

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

Crl.Rev.Pet.No. 345 of 1999()

CRA.381/1998 of SESSIONS COURT, THRISSUR DT.25.3.99.

CC.350/1995 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHAVAKKAD

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REVN. PETITIONER: APPELLANT/ ACCUSED

**RAJAN, S/O.KARIYATT SANKARAN,
THAMPANKADAVU DESOM,
THALIKULAM VILLAGE, CHAVAKKAD TALUK.**

BY ADV. SRI.T.A.SHAJI

RESPONDENTS: RESPONDENTS/ COMPLAINANT

- 1. SASIDHARAN, S/O. KOZHIPARAMBIL,
RAMAKRISHNAN, THALIKULAM DESOM,
THALIKULAM VILLAGE, CHAVAKKAD TALUK.**
- 2. STATE OF KERALA, REP.BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.**

**BY ADV. SRI.M.K.ABOOBACKER
PUBLIC PROSECUTOR SRI.C.M.KAMMAPPU**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 12/06/2007, ALONG WITH CRRP NO. 346 OF 1999 THE COURT ON
19/06/2007 PASSED THE FOLLOWING:**

CRRP. NO.345/1999

ORDER ON CRL.MP. NO.1426/1999 IN CRRP. NO.345/1999

DISMISSED

19.06.2007

SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.S. TO JUDGE

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K.R. UDAYABHANU, J.

CRL.R.P.NOS.345 & 346 OF 1999

DATED THIS THE 19th JUNE 2007

ORDER

Crl.R.P.No.345/1999 is filed by the accused/revision petitioner in C.C.No.350/1995 in the file of the Judicial Magistrate of First Class, Chavakkad and Crl.R.P.No.346/1999 is filed by the same person being accused in C.C.No.478/1995 in the file of the same court with respect to the proceedings under Section 138 of the Negotiable Instruments Act. In C.C.No.350/1995 the accused stands convicted and sentenced, as modified by the appellate court to pay a fine of Rs.35,000/- and in default to undergo rigorous imprisonment for a period of three months and out of the fine amount, a sum of Rs. 31,000/- is ordered to be paid to the complainant under Section 357(1)Cr.P.C. and in C.C.No. 478/1995, the accused stands convicted and sentenced to pay a fine of Rs.25,000/- and in default to undergo rigorous imprisonment for a period of three months and out of the fine amount, a sum of Rs.23,000/- is ordered to be paid to the complainant as compensation under Section 357(1)Cr.P.C.

2. Both the cases are with respect to the same transaction. It is the case of the complainant in C.C.No.350/95, that the accused borrowed a sum of Rs.48,000/- on 12-3-1995 and towards discharging the liability issued the impugned cheque dated 7-4-1995 for Rs.28,000/- on 19-3-1995 and also another cheque dated 7-8-1995 for a sum of Rs.20,000/-. Both cheques were dishonoured on account of the stop payment order issued by the accused. Lawyer notice was issued and reply notice was received which according to the complainant contained false averments.

3. The evidence adduced in C.C.No.350/1995 consisted of the testimony of Pws.1 to 4, Exts.P1 to P7 and Dws.1 and 2 and Exts.D1 to D8. The evidence adduced in C.C.No.478/1995 consisted of the testimony of Pws.1 to 4, Exts.P1 to P7 and Dws.1 and 2 and Exts.D1 to D10.

4. The contention of both sides in both the cases are the same and the evidence also is the same. The accused/revision petitioner is an employee of the Syndicate Bank. Perhaps in order to avoid disciplinary proceedings from the Bank, he

deposited the amounts, i.e. Rs.28,000/- and Rs.20,000/- just before the date of the cheque and withdrew the same after the cheques were dishonoured on the ground that the payment was stopped by the drawer. Hence the dishonour was not for want of funds in the account of the accused. The above is one of the contentions of the revision petitioner/accused that the cheques were not dishonoured for want of funds in the account of the accused and hence the offence under Section 138 would not be attracted. Both the courts have considered the legal implications of the action of the accused and rejected the contention; and rightly so. The trial court has relied on the decision in **M/s. Modi Cement Limited v. K.K. Nandhi, A.I.R. 1998 S.C. 1057.** The Supreme Court has reiterated in subsequent decisions also the proposition for bouncing of the cheque on account of payment stopped by the drawer would attract Section 138 of the Negotiable Instruments Act. Hence, I find that the contention has no merit.

5. The evidence adduced at the instance of the complainant to prove the execution and dishonour consisted of the testimony

of Pws.1 to 4 of whom PW1 is the complainant and PW2, an alleged occurrence witness and Pws.3 and 4 are the Bank officials representing the Bank in which the cheque was presented as well as the drawee bank. PW1 has proved the impugned cheque and the rest of the documents with respect to the issuance of notice and receipt of the same. The same witnesses were examined and the documents with respect to dishonour, issuance of notice and receipt of the same including the cheques were produced in other case as well.

6. The evidence at the instance of the accused/revision petitioner consisted of his own testimony and the evidence of DW2, S.H.O. Vadanappally with respect to an earlier complaint filed by the same complainant against the accused as well, although in the above instance certain amounts were allegedly borrowed by the brother of the accused herein. DW2 was examined in both the cases; and he has stated that the parties were directed to approach the civil court. The above evidence was adduced to establish that the complainant had falsely implicated him at an earlier instance also and to fortify his

contention that the impugned cheques were obtained by force. It is the contention of the accused/revision petitioner that on 25-3-1995, the complainant along with certain persons including a police constable came to his house, threatening him and made him sign the impugned cheques. Immediately thereafter he had sent Ext.D1 notice to the complainant dated 27-3-1995 through lawyer and informed that he will be issuing stop memo to the Bank. Ext.D2 produced in C.C.No.478/1995 is the reply notice sent by lawyer of the complainant denying the allegations and insisting that he would be presenting the cheques and the accused would be liable for the consequences. Ext.D3 is the compliant dated 27-3-1995 sent to the Superintendent of Police, Thrissur complaining that the complainant and others on 25-3-1995 at about 7 p.m. came to his house and that included a person who appeared to be police constable and got him issued the cheques by force. He has also produced copy of the postal receipt in C.C.No.478/1995. Both the courts have found that the above evidence of DW1 is hardly sufficient to establish the fact that he owed no money to the complainant and that the cheques

were issued under threat. The courts below have noted that the accused did not take any steps to further pursue the matter. He has just sent a complaint by post to the Superintendent of Police. He did not enquire about as to the action taken by the Superintendent of Police. He has not approached the local police which would have been the normal conduct. Further he issued the stop memo and deposited the required amount in the Bank and withdrew the same soon after the return of the cheques. PW1 has admitted that he had filed a complaint before the local police to see that the amount of Rs.20,000/- borrowed by the brother of the accused by name Subilan has not returned the sum. He has stated that he had implicated the accused, Subilan and another brother of the accused by name Biju. He has pleaded ignorance as to the alleged complaint sent by the accused to the Superintendent of Police. He has admitted that in the above matter actually the liability was that of Subilan only. I find that the fact that the complainant had made the accused also a party in the complaint filed before the police cannot be the only ground to discard the prosecution evidence altogether. The fact

that the accused had allegedly complained to the Superintendent of Police immediately after the alleged date of execution of the cheque and also issued a lawyer notice to the complainant and the complainant has replied to the same would indicate that the accused was aware of all the consequences. No steps were taken to summon the file with respect to the complaint allegedly sent by the accused to the Superintendent of Police. It is also to be noted that the accused is a Bank employee and not an illiterate person. After the date of the alleged forcible execution of the cheque he had contacted the lawyer and had the legal assistance. In the above circumstances I find that the version of the accused/revision petitioner cannot be believed as such. I find that the concurrent findings of the courts below are liable to be upheld.

7. So far as the sentence is concerned, in C.C.No.350/1995 the same is modified to pay a fine of Rs.31,000/- and in default to undergo simple imprisonment for one month. The fine amount is to be paid to the complainant as compensation under section 357(1)Cr.P.C. The sentence imposed in C.C.No.478/1995 is

modified to pay a fine of Rs.23,000/- and in default to undergo simple imprisonment for one month. The fine amount, if realised, is to be paid to the complainant as compensation under Section 357(1)Cr.P.C. The Crl.revision petitions are disposed of accordingly.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

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CRL.R.P.NOS.345 & 346 of
1999

ORDER

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19-6-2007

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K.R.UDAYABHANU, J

CRL.R.P.NO.786 OF 1998

ORDER

19-2-2007